

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3124 OF 2021

Arjun Ekanath Patil	]	..	Applicant
vs.			
Union of India & Anr.	]	..	Respondent

Mr.G.B. Pawar, for the Applicant.

Mr.Hiten Venegaonkar for Respondent No.1-UOI.

CORAM : BHARATI DANGRE, J

DATE : 19TH AUGUST, 2022.

P.C.

1] The Applicant who is incarcerated in CR No.RC.01(E)/2018 (Special Case No.37/2018) registered with CBI.BS&FC, Mumbai, seeks his release on bail, on being arrested on 20.02.2018.

He seeks parity with co-accused Manish Bosamiya, who came to be released on bail by this court on 24.06.2022 on the ground that he is in custody for four years and three months, and by considering the magnitude of trial, on the investigation being completed and charge-sheet being submitted, the Applicant cannot be incarcerated any further, pending the trial.

2] The learned counsel Mr.Venegaonkar submits that the Applicant is assigned a distinct role and he do not deserve similar treatment as the co-accused Manish Bosamiya, who was released on bail.

3] I have perused the order passed by Justice Prakash D. Naik while dealing with Bail Application No.3786/2021. On referring to the accusations levelled against the accused persons, the submission of the learned counsel for the Applicant about he being in custody since 04.03.2018 was appreciated in the backdrop of the fact that there is no progress in the trial, charge is not framed and the prosecution propose to examine about 150 witnesses and there are 30 accused in the case.

Referring to the decision of the Hon'ble Apex Court in the case of Shaheen Welfare Association vs. Union of India & Others, 1996(2)SCC 616 and further decision in the case of **Dipak Subhashandra Mehta v.s CBI & Anr., in Criminal Appeal No.348/2012**, the learned Judge has recorded as under :

“In paragraph 19 of the said decision it was observed that although the accused was charged for committing economic offences of huge magnitude, the Court cannot loose sight of the fact that investigating agency has completed investigation and submitted charge sheet including additional charge sheet. Necessary charges have not been framed.

Considering the facts of this case and the fact that the applicant is in custody for 4 years and 3 months, bail can be granted to the applicant.”

The above observations apply with equal force to the Applicant.

4] The Hon'ble Apex Court recently in the case of **Union of India vs. K.A. Najeed, 2021 (3) SCC 713** has reiterated the principles of liberty as enshrined in Article 21 of the Constitution and held that liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial.

5] The following observations of the Apex Court deserve to be highlighted.

“ It is true that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, the Supreme Court would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

6] With the presumption of innocence of an accused till proven guilty the onus is on the prosecution to bring home the guilt of an accused. This being a cardinal principal of law, acknowledged throughout the world coupled with a right of accused for a speedy trial which has been well accepted as a facet of Article 21. Prolonged delay in culmination of the trial will not justify the indefinite incarceration of the accused, however, serious the nature of accusations may be with no exception to economic offences. Once investigation is complete and charge sheet is filed, presence of the accused in custody is not necessary.

On this count I am satisfied that the applicant deserve his release on bail, on the ground of his long detention, awaiting the culmination of trial.

7] While considering the merits of the accusations, when the charge-sheet is perused which comprise of statements recorded during investigation, it can be seen that the prosecution allege that there was

fraudulent issuance of Letters of Undertakings (LOUs) for and on behalf of partnership firm viz. M/s.Diamond R.US, M/s.Solar Exports and M/s. Stellar Diamonds, with Mr.Nirav Mody as one of the partner.

It has transpired during the investigation that aforesaid firms had approached the Bank and presented the set of import documents with request to allow buyers credit for making payment to the overseas suppliers. However, since there was no sanction limit in the name of above firms, the branch officials requested the firms to furnish at least 100% cash margins for issuing LOUs for raising buyers credit.

It is the prosecution case that the firms were availing this facility in the past however, the bank did not reveal any facility to that effect having been granted. They have fraudulently issued LOUs without following Bank's prescribed procedure of obtaining request applications, documents, approval of the authorities thereto etc. and without making entries in the trade finance module of CBS System, avoiding detection of the transactions, so made, and transmitted swift instructions to the overseas branches of Indian Banks under Buyer's Credit and funding the Nostro Accounts of PNB.

8] As far as present Applicant is concerned charge-sheet accuse him of acting in connivance with accused M. Bosmiya. He is accused of working in close association with Manish Bosamiya and Subhash Parab and it is alleged that he was aware that the supporting documents were fraudulent.

The accused Manish Bosamiya, Subhash Parab and present Applicant are alleged to be privy to the preparation of fraudulent LOUs and at the most role attributed to the present Applicant is of acting as per instructions of Manoj Bosmiya.

When Manish Bosamiya himself is released on bail, I see no

reason why the Applicant shall be denied his liberty. Hence, even on merits of the matter I am convinced that the Applicant deserve to be released on bail as the investigation is now complete and charge against the preset Applicant is already crystallized in the form of the charge-sheet.

9] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence the following order:

(a) Application is allowed.

(b) Applicant – Arjun Ekanath Patil shall be released on bail in connection with CR No.RC.01(E)/2018 (Special Case No.37/2018) registered with CBI.BS&FC, Mumbai, on furnishing P.R. bond to the extent of Rs.1 Lakh with one or more sureties of the like amount.

The Applicant shall be released on cash bail of Rs.1 Lakh for a period of four weeks in lieu of the sureties. During the said period the applicant shall arrange for the sureties.

(c) The applicant shall report to CBI, Banking and Finance, Bandra and Kurla Complex, Mumbai once in a month on every first Saturday of the month between 11.00 a.m. and 1.00 p.m. for first three months; and thereafter once in three months on every first Saturday of the month between 11.00 a.m. and 1.00 p.m. till further orders.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall deposit his Passport before the Special Court.

(f) The Applicant shall not leave India without prior permission of the Trial Court.

(g) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]